

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to **claims 1-16** have been considered however Examiner has changed the rejection based on a new reading of the claims. Examiner will however consider a new ground(s) of rejection made using **Mault et al. (US 2002/0133378 A1)** (hereinafter "**Mault**") in view of **Grana (US 2006/0053184 A1)** in view of the ability of the software program to develop meal plans. Like Mault and Grana, Applicant discloses a software used in weight management. While Mault allows the management of foods and monitors various factors dealing with weight management, Grana specifically creates meals and menu for the client. Grana enables the system to generate a meal plan for the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. Like the current system, the database includes prestored information on food and presents menus and allows the client to alter the meal plan.

2. Furthermore, Applicant argues that it would have not been obvious to combine the systems in Mault and Grana with the foods and activities database in Hellmich. However, Grana in paragraph 34 already disclosed the usages a food preferences field with favorite foods and flavors for example but in this system there is no mention of favorite activities. However, in a weight management system it would have been obvious to note that a client should

partake in favorite activities as well. Therefore, the rejection has not been withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-43, 45-47, and 49-53** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault** in view of **Grana (US 2006/0053184 A1)**.

5. **With respect to claims 1 and 17: (Currently Amended)** Mault teaches:

- a user computer; (paragraphs 41, 42 and 56 – preferred embodiment is a computing device)
- a weight control program computer in communication with the user computer over a network; (paragraphs 41, 42 and 56 – preferred embodiment is a computing device)
- a foods database accessible by the weight control program computer; (Figs 5A and 5B; paragraph 51 – food entry options in database is accessible via computing device)

Art Unit: 3689

- the foods database having stored thereon data relating to a plurality of foods; (Figs 5A and 5B; paragraph 51 – food entry options in database is accessible via computing device)
- said weight control program computer stores a software program having instructions causing the weight control program computer to receive data relating to foods from the person via the user computer and to alter the foods database based upon the received data. (Figs 5A and 5B; paragraphs 43 and 51 – food entry options in database is accessible via computing device)

Mault does not teach however, Grana teaches:

- said weight control program computer stores a software program having instructions causing the weight control program to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer; (paragraphs 31 and 38– menu/recipe database; daily menu screen allows changes in meal plan)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault and Grana. Mault teaches a system and method for integrated caloric management. The client enters/logs what they have eaten for the day or week into the system and it in turn calculates their caloric intake as well as other information pertinent to weight management. A software program is used. Grana allows the system to generate a meal plan for

Art Unit: 3689

the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. The database includes prestored information on food and presents menus. It would have been obvious to combine Mault and Grana because it would be easier for someone monitoring their diet and learning new habits to have menu suggestions from a weight management program.

6. **With respect to claims 2 and 39:** Mault discloses software executing on the weight control program computer operable to search the foods database to locate and transmit to the user computer data relating to foods stored on the foods database which match criteria received from the user computer. (Figs 5A and 5B; paragraph 51 – food entry options in database is accessible via computing device)

7. **With respect to claims 3, 18 and 40:** Mault discloses the food selections received from the user computer are based upon the data relating to foods transmitted by the software. (Figs 5A and 5B; paragraph 51 – food entry options in database is accessible via computing device)

8. **With respect to claims 4 and 41:** Mault teaches at least some of the data stored on the foods database relates to branded foods. (Fig. 20B, item 266 – notes the Hormell Sausage can be used in recipe)

9. **With respect to claims 5, 19 and 42:** Mault discloses the limitations in the rejections cited above. Mault does not disclose at least some of the data stored on the foods database relates to foods prepared by consumer restaurants. However, Grana teaches at least some of the data stored on the foods database relates to foods prepared by consumer restaurants. (paragraph 41 – “restaurants

field permits a user to be presented with a list of meals available at various restaurants"; replacements or alternatives suggested)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include food prepared in restaurants to the foods database because this enables user "to maintain their planned diets in every venue." (Grana paragraph 41)

10. **With respect to claims 6, 30 and 34:** Mault teaches the meal plan is based at least in part on a target food consumption value maintained by software executing on the weight control program computer. (Figs. 3H-3L, 6A and 6B, 7A - 7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

11. **With respect to claims 7 and 22:** Mault teaches software executing on the weight control program computer operable to alter the target food consumption value based upon activity selections received from the user computer. (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

12. **With respect to claims 8 and 23:** Mault teaches:

- an activities database accessible by the weight control program computer, the activities database having stored thereon data relating to a plurality of activities; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)
- software executing on the weight control program computer operable to search the activities database to locate and transmit to the user computer

data, relating to activities stored on the activities database which match criteria received from the user computer; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities) and

- wherein the activity selections received from the user computer are based upon the data relating to activities transmitted by the software. (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

13. With respect to claims 9, 24, 33 and 38: Mault teaches software executing on the weight control program computer operable to receive data relating to activities from the person via the user computer and to alter the activities database based upon the received data. (Figs. 3H-3L, 6A and 6B, 7A - 7B and 8A-8D; paragraphs 52-54 – weight of individual calculated; target food consumption calculated; activity selections automatically calculated into balance reports)

14. With respect to claims 10 and 25: Mault teaches the target food consumption value is generated automatically by software executing on the weight control program computer. (Figs. 2B; 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 45, 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

15. With respect to claims 11, 26 and 35: Mault teaches the target food consumption value is based at least in part on an initial weight of the person. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 45, 52-54 – weight of individual calculated; target food consumption calculated; activity selections automatically calculated into balance reports)

16. **With respect to claims 12, 27 and 36:** Mault teaches the target food consumption value is based at least in part on a current weight of the person. (Figs. 3H-3L, 6A and 6B, 7A and 7B and 8A-8D; paragraphs 45, 52-54 – weight of individual calculated; target food consumption calculated; activity selections automatically calculated into balance reports)

17. **With respect to claim 13, 28 and 43:** Mault teaches a favorites database accessible by the weight control program computer, the favorites database having stored thereon data relating to foods which are favorites of the person. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

18. **With respect to claim 14 and 29:** Mault teaches the foods which are favorites of the person are specified by the person. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

19. **With respect to claim 15 and 21:** Mault teaches the foods which are favorites of the person are determined automatically by software executing on the weight control program computer. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

20. **With respect to claims 16, 31, 46 and 53:** Mault discloses the limitations in the rejections cited above. Mault does not disclose wherein the network comprises the Internet. However, Grana teaches wherein the network comprises the Internet. (paragraph 23 – server is world wide web server connected to Internet)

Therefore, it would have be obvious to one of ordinary skill in the art at the time of the invention to have in Internet as part of the network because this would enable the user to have access to the system at home and at work.

21. **With respect to claim 20:** Mault discloses software executing on the weight control program computer operable to receive data relating to foods from the person via the user computer and to alter the foods database based upon the received data. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – weight of individual calculated; target food consumption calculated; activity selections automatically calculated into balance reports)

22. **With respect to claim 32: (Currently Amended)** Mault discloses

- a user computer; (paragraphs 41, 42 and 56 – preferred embodiment is a computing device)
- said weight control program computer stores a software program having instructions causing the weight control program computer to maintain a target food consumption value; (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated)
- an activities database accessible by the weight control program computer, the activities database having stored thereon data relating to a plurality of activities; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)
- said weight control program computer stores a software program having instructions causing the weight control program computer to

search the activities database to locate and transmit to the user computer data relating to activities stored on the activities database which match criteria received from the user computer; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

- said weight control program computer stores a software program having instructions causing the weight control program computer to alter the target food consumption value based upon activity selections received from the user computer, which activity Selections received from the user computer are based upon the data relating to activities transmitted by the software. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

Mault does not disclose, however Grana teaches:

- a weight control program computer in communication with the user computer over a network; (paragraphs 23 – server is a computer connected to Internet “user uses a client machine”)
- a foods database accessible by the weight control programs computer, the foods database having stored thereon data relating to a plurality of foods; (paragraphs 31 and 36 – nutritional database) and
- said weight control program computer stores a software program having instructions causing the weight control program computer to

generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer to allow the person to alter the meal plan based upon food selections received from the user computer, the meal plan being based at least in part on the target food consumption value. (paragraphs 31 and 38– menu/recipe database; daily menu screen allows changes in meal plan)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault and Grana. Mault teaches a system and method for integrated caloric management. The client enters/logs what they have eaten for the day or week into the system and it in turn calculates their caloric in take as well as other information pertinent to weight management. A software program is used. Grana allows the system to generate a meal plan for the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. The database includes prestored information on food and presents menus. It would have been obvious to combine Mault and Grana because it would be easier for someone monitoring their diet and learning new habits to have menu suggestions from a weight management program.

23. **With respect to claim 37:** Mault discloses the limitations in the rejections cited above. Mault does not disclose, however Grana teaches:

- a foods database accessible by the weight control program computer, the foods database having stored thereon data relating

to a plurality of foods; (paragraphs 30, 31 and 34 – information in database based on food inquiries and stored on system)and

- software executing on the weight control program computer operable to generate a meal plan comprised of foods stored on the foods database, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer, the meal plan being based at least in part on the target food consumption value. (paragraphs 27 and 35 – use of software; weekly list of meals provided)

Therefore, it would have be obvious to one of ordinary skill in the art at the time of the invention to allow user to alter the meal plan so that the user can have different meal options on different days.

24. **With respect to claim 45:** Mault discloses the activities which are favorites of the person are determined automatically by software executing on the weight control program computer. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

25. **With respect to claim 47: (Currently Amended)** Mault teaches:

- a user computer; (paragraphs 41, 42 and 56 – preferred embodiment is a computing device)
- an activities database accessible by the weight control program computer, the activities database having stored thereon data

relating to a plurality of activities; (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

- said weight control program computer stores a software program having instructions causing the weight control program computer to maintain a target food consumption value and to allow the person to alter the target food consumption value based upon activity selections received from the person; (Figs. 3H-3L, 6A and 6B, 7A - 7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)
- a foods database accessible by the weight control program computer, the foods database having stored thereon data concerning a plurality of foods; (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)
- a favorites database accessible by the weight control program computer, the favorites database having stored thereon data relating to foods and activities which are favorites of the person. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

Mault does not teach, however Grana discloses:

- a weight control program computer in communication with the user computer over a network; (paragraphs 23 – server is a computer connected to Internet “user uses a client machine”)
- said weight control program computer stores a software program having instructions causing the weight control program computer to generate a meal plan comprised of foods stored on the foods database based at least in part on the target food consumption value, to transmit the meal plan to the user computer and to allow the person to alter the meal plan based upon food selections received from the user computer; (paragraphs 27, 38 and 35 – use of software; weekly list of meals provided) and

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault and Grana. Mault teaches a system and method for integrated caloric management. The client enters/logs what they have eaten for the day or week into the system and it in turn calculates their caloric in take as well as other information pertinent to weight management. A software program is used. Grana allows the system to generate a meal plan for the client using recipes and menu information stored in a tailored menu/recipe and nutritional databases. The database includes prestored information on food and presents menus. It would have been obvious to combine Mault and Grana because it would be easier for someone monitoring their diet and learning new habits to have menu suggestions from a weight management program.

26. **With respect to claim 49:** Mault teaches the foods and activities which are favorites of the person are determined automatically by software executing on the weight control program computer. (Figs. 3H-3L, 6A and 6B, 7A -7B and 8A-8D; paragraphs 52-54 – target food consumption calculated; activity selections automatically calculated into balance reports)

27. **With respect to claim 50:** Mault teaches software executing on the weight control program computer operable to search the favorites database to locate and transmit to the user computer data relating to foods and activities stored on the favorites database which match criteria received from the user computer. (Fig. 20C, item 278; paragraph 87 – in foods database favorite foods are indicated by selecting favorite food icon)

28. **With respect to claim 51:** Mault teaches software executing on the weight control program computer operable to alter the target food consumption value based upon activity selections received from the user computer, which activity selections received from the user computer are based upon the data relating to activities stored on the favorites database transmitted by the software. (Fig. 6A and 6B; paragraph 52 – exercise database lists types of activities)

29. **With respect to claim 52:** Mault teaches software executing on the weight control program computer operable to alter the meal plan based upon food selections received from the user computer, which food selections received from the user computer are based upon the data relating to foods stored on the favorites database transmitted by the software. (Fig. 20C, item 278; paragraph

Art Unit: 3689

87 – in foods database favorite foods are indicated by selecting favorite food icon)

30. **Claims 44 and 48** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault** in view of **Grana** and further in view of **Nanci Hellmich**, "Thinning Out The Diet Myths" USA Today, Jan. 3, 2001 (hereinafter "**Hellmich**").

31. **With respect to claim 44:** Mault/ Grana disclose the limitations in the rejections cited above. Mault/Grana do not disclose, however Hellmich teaches the activities which are favorites of the person are specified by the person. (page 3, 6th full paragraph – overweight children are encouraged to choose a favorite activity)

Therefore, it would have be obvious to one of ordinary skill in the art at the time of the invention to have the user specify activities which are their favorites because of the motivation to encourage the user to want to work out.

32. **With respect to claim 48:** Mault/ Grana disclose the limitations in the rejections cited above. Mault/Grana do not disclose, however Hellmich the foods and activities which are favorites of the person are specified by the person (page 3, 6th, 13th and 14th full paragraphs – overweight children are encouraged to choose a favorite activity; dieters are encouraged to eat favorite foods while on diet).

Therefore, it would have be obvious to one of ordinary skill in the art at the time of the invention to have the user specify the food and activities which are their favorites because of the motivation to encourage the user to want to work

Art Unit: 3689

out and not binge on the foods if they are forbidden. (Hellmich: page 3, 14th full paragraph)

CONCLUSION

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI RIVIERE whose telephone number is (571)270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Name: Heidi Riviere /H. R./
Examiner, Art Unit 3689

Title: Examiner

Signature: /Janice A. Mooneyham/
Supervisory Patent Examiner, Art Unit 3689

Date:

